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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,815	12/22/2000	Stephen J. Boies	YOR920000268 (1963-4941)	4300
28062	7590	10/29/2004	EXAMINER	
BUCKLEY, MASCHOFF, TALWALKAR LLC 5 ELM STREET NEW CANAAN, CT 06840			MOONEYHAM, JANICE A	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,815

Applicant(s)

BOIES ET AL.

Examiner

Jan Mooneyham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004 and 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-92 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to the applicant's communication filed on August 16, 2004 and September 15, 2004, wherein:

Claims 1-92 are currently pending;

Claims 1,2, 27, 37, 72 and 83 have been amended;

No claims have been added or cancelled.

Response to Amendment

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-37 and 72-83 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-37 and 72-83 only recites an abstract idea. The recited steps of merely receiving a request, determining if seating is available, providing notification, guaranteeing the seating, assigning a seat assignment, and reassigning a passenger wherein the reassigned seat is a permanent assignment does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to find seating for an flight. There is no technology set forth in the body of the claims.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

In the present case, the applicant has failed to recite technology in the body of the claim language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-92 are rejected under 35 U.S.C. 103(a) as being obvious over Hebling et al (US Patent 5,797,126) (hereinafter referred to as Hebling) in view of "Tips for the Road" (hereinafter referred to as Tips).

Hebling discloses a method, system and program for processing for a category of seating comprising:

Receiving a request for the preferred category of seating (Fig. 4, Purchase Tickets Command Button)

Determining if the seat is available (Fig. 4, Seating Availability Chart Window)

Providing notification (Fig. 4, Central Station Confirm Instant Availability and Block Seats)

Guaranteeing the seating (Fig. 4, Block Seat)

Assigning a seat assignment (Fig. 4, Print Confirmation Redemption Coupon)

Hebling does not disclose that the seats are airline seats or assigning a passenger to a flexible seat assignment, reassigning the passenger to a different seat assignment and converting the reassigned seat to a permanent seat assignment.

However, Tips discloses seat assignments on an airline (United Airlines) and assigning the passenger to a flexible seat assignment, reassigning passenger to a different seat and converting the reassigned seat to a permanent seat assignment (page 1, paragraph 6 – all seat assignments on United Airlines are subject to release and reassignment).

It would have been obvious to one of ordinary skill in the art to incorporate into the disclosure of Hebling the teachings of Tips so as to allow the airlines to shuffle the seating to maximize and provide appropriate seating to as many passengers as possible.

The fact that the request comes from a travel agent or a passenger, that the request is received during the check-in process, or when the passenger inquires about the flight or that the category of seating is a window seat, an aisle seat, a bulkhead seat, an emergency exit row seat or a seat adjacent to a certain passenger, away from a passenger, a particular row, does not affect how the method or system works and thus is non-functional descriptive material and given little patentable weight, see *In re Gulack*, 703 F. 2d. 1381, 1385, 217 USPQ 401, 404 (Fed Cir. 1983); *In re Lowry*, 32 F. 3d. 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Furthermore, the Examiner takes Official Notice that it is common business practice of the airlines to reserve seat by category, ie., first class verses coach, aisle verses window. It is also common business practice for the airlines to reassign seats after making a first assignment. An example of this is when an underage person is assigned to a seat requiring an adult, for example near an emergency exit.

Response to Arguments

4. Applicant's arguments filed August 15, 2004 have been fully considered but they are not persuasive.

Applicant states on page 15 of the response that the applicant's system "reassigns passengers to different seats within their guaranteed category of seating in order to satisfy a subsequent passenger's request." However, the applicant's claim language actually reads "reassigning the passenger to a different "flexible" seat assignment within the guaranteed category of seating based on another request," and follows this with a dependent claim that reads

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“the request is received from a passenger.” This means that the person who actually had the seat can thereby request to move.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that Hebling and Tips fail to teach or suggest a preferred category of seating. Applicant fails to realize that most arenas, be it an airline or a concert hall, have category of seats. The seats can be categorized by cost and location. Once the user in Hebling picks a seat, the applicant has in effect, sent a request for the preferred category of seating. Category of seating can be a very broad term. On airlines, one category of seating can be first class seating verses coach. These categories have categories within the categories. For example, aisle verses window in coach.

The applicant further argues that blocking seats is entirely different from guaranteeing seats. The Examiner asserts that when a reservation is made, the seat is blocked and also guaranteed. The applicant then argues that where the guarantee results in a “flexible” seat assignment, there is no “blocking.” In face, the seat assignment may be flexible to prevent blocking. The Examiner disagrees with this argument. A seat can be blocked and guaranteed. A blocked seat is guaranteed to be available until such time that it unblocked, say for example, the person's credit card did not go through.

Furthermore, Tips describes a flexible seat assignments as defined by the applicant on page 18. The applicant states that neither method involves “flexible” seat assignments or changing seat assignments. However, Tips, in paragraph 6, states that the seat assignments are subject to release and reassignment.

The applicant continues to argue on the bottom of page 18 and the top of page 19 that the reassigning is based on another passenger’s request. In response to applicant's argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., that the reassigning is based on another passenger’s request) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation comes from knowledge generally available to one of ordinary skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

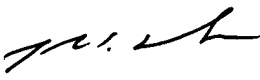
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan Mooneyham whose telephone number is (703) 305-8554. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JM



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